IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.733 OF 2005
IN
COMPANY PETITION NO.372 OF 2004

HFCL Infotel Ltd. Appellant
vs.
ESSAR Investments Ltd. Respondent

Mr.S.A.Divan, senior counsel with Mr.Birendra Saraf and Mr.I.R.Nankani i/b.Nankani & Associates for the appellant.

Mr.Janak Dwarkadas, senior counsel with Mr.Hemang Raithatla i/b.R.M.G.Law Associates for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

P.C.

After having heard the learned senior counsel for the parties, we are satisfied that no case for interference in the impugned order is made out.

2. Both the learned senior counsel, however, submitted that the parties have no objection if the disputes regarding the claim of the appellant is referred to the arbitration of the sole arbitrator. The learned senior counsel for the respondent also made a with prejudice statement that the respondent acknowledges that the sum of Rs.14.10 crores is an 'assigned liability'.

3. In view of the aforesaid submissions, though no interference is called for in the impugned order, we pass the following order:

(i) The parties agree that the disputes regarding the claim of the appellant covered by the appellant's advocate letter dated 3.5.2005 bearing reference no.MLB/5295/2005 be referred to the sole arbitration of Justice D.R.Dhanuka (Retd). We order accordingly.

(ii) We record and accept the statement made by the learned senior counsel for the respondent-company that notwithstanding the statement in paragraph 4 of the reply affidavit filed by the respondent in March 2005 in response to the Company Petition No.372/2004, the respondent acknowledges that the sum of Rs.14.10 crores is an 'assigned liability'.

3. Needless to say that all contentions of the parties are kept open to be agitated in the arbitration proceedings.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)